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ABSTRACT

Part of a series of classroom aids designed for real estate instructors, this instructional packet was designed to help real estate students understand legal requirements for real estate inspectors in Texas. The material is based on Section 18C of the Real Estate License Act, as amended by the 1985 Texas Legislature. Following a presentation on the law, a series of overhead masters, keyed to the text, are provided. The visuals cover: (1) the definition of a real estate inspector; (2) required courses; (3) inspector license requirements; (4) real estate inspector license fees; (5) how competency is established; (6) grounds for the denial, suspension, or revocation of the license; (7) license exemptions; (8) the purposes of the Real Estate Inspector Recovery Fund and facts allowing recovery from the fund; and (9) effective dates. (AYC)

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TEACHERS INSTRUCTIONAL PACKET (TIP)
No. 11, Spring 1986

THE REAL ESTATE INSPECTOR

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This packet is designed to help real estate instructors clearly communicate with students studying for real estate careers. The content and materials may be modified as the instructor deems appropriate. Reproduction of materials for student use is encouraged.

TIPS on the TIP

This Teacher Instructional Packet (TIP) is designed to provide the real estate instructor with classroom aids. Packets have been reviewed carefully, but there is always room for improvement. Suggestions to improve the usefulness of the TIP are welcomed.

Introduction to TIP-11

TIP-11 has been developed to help students understand requirements for real estate inspectors in Texas. This material is based on Section 18C of the Real Estate License Act (Article 6573a, V.A.C.S.) as amended by the 1985 Texas Legislature. This material is provided as a **supplement** to existing course content. It is not a pat presentation. Instructors may use as much or as little as needed.

This TIP is a continuation of TIP-1, The Texas Real Estate License Act. TIP-11 may be used alone or in conjunction with TIP-1.

NOTE: Instructors should refer to the latest edition of Rules of The Texas Real Estate Commission available from the Texas Real Estate Commission for a nominal fee. In addition, changes in rules are published in the Texas Register, copies of which are available from the office of the Texas Secretary of State.

Section 18C.(a) For purposes of this section, the following definitions shall apply:

(1) "Real Estate Inspector" means a person or persons who hold themselves out to the public as being trained and qualified to inspect improvements to real property, including structural items and/or equipment and systems, and who accept employment for the purpose of performing such an inspection for a buyer or seller of real property.

(2) "Real Estate Inspection" means a written or oral opinion as to the condition of improvements to real property, including structural items and/or equipment and systems.

(3) "Commission" means the Texas Real Estate Commission.

(4) "Core Real Estate Inspection Courses" means educational courses approved by the commission, including, but not limited to, electrical, mechanical, plumbing, roofing, and structural courses of study.

(b) The commission shall promulgate and prescribe the following rules and regulations:

(1) the application forms and requirements for original and renewal licenses;

(2) the method and content of examinations administered under this section; and

(3) the fees for original and renewal license application as provided by Subsection (f) of this section and a fee for each licensing examination as provided by Subsection (f) of this section.

(c) A person may not act or attempt to act as a real estate inspector in this state for a buyer or seller of real property unless the person possesses a real estate inspector license issued under this section. To be eligible for a license, an applicant must be an individual, a citizen of the United States or a lawfully admitted alien and a resident of this state for at least 60 days immediately preceding the filing of an application. The applicant must be at least 18 years old and must satisfy the commission as to the applicant's honesty, trustworthiness, integrity, and competency. An applicant for an original real estate inspector license must submit satisfactory evidence to the commission of successful completion of not less than ninety classroom hours of core real estate inspection courses. The commission shall determine the competency of an applicant solely on the basis of the examination required by Subsection (g) of this section. An applicant must file an application for a license with the commission on a form prescribed by the commission.

(d) The commission shall issue a real estate inspector license to an applicant who possesses the required qualifications, passes the appropriate licensing examination, pays the examination fee and original license application fee required by this section, and pays the fee required by Subdivision (2) of Subsection (1) of this section.

(e) A license issued under this section expires one year after the date it is issued. To renew a license, the licensee must submit a renewal application to the commission before the expiration date of the license. The renewal application must be on a form prescribed by the commission, and must be accompanied by the renewal fee. The commission shall notify the licensee of the expiration date of the license and the amount of the renewal fee. The notice shall be mailed not later than the 30th day before the expiration date. A licensee shall notify the commission within 30 days after a change of place of business

Visual #1

A Real Estate Inspector

Visual #2

Required Courses

Visual #3

Inspector License Requirements

and pay the applicable fee provided by subsection (f) of this section.

(f) The commission shall charge and collect reasonable and necessary fees to administer this section as follows:

(1) a fee not to exceed $150 for the filing of an original application for license as a real estate inspector;

Visual #4

Real Estate Inspector License Fees

(2) a fee not to exceed $200 for the annual license renewal of a real estate inspector;

(3) a fee not to exceed $50 for taking a license examination;

(4) a fee not to exceed $20 for a request for a change of place of business or to replace a lost or destroyed license. All fees paid to the commission shall be by cashier's check or money order.

(g) The commission shall prescribe the licensing examination, which shall be prepared by or contracted for by the commission. A licensing examination shall evaluate competency in the subject matter of all required core real estate inspection courses. The licensing examination shall be offered not less often than once every two months in Austin. If a license applicant fails the examination, the applicant may apply for re-examination by filing a request with the commission and paying the examination fee. Each license applicant must satisfy the examination requirement not later than six months after the date on which the license application is filed. A license applicant who fails to satisfy the examination requirement within six months after the date on which the license application is filed must submit a new license application with the commission and pay the examination fee to be eligible for examination.

Visual #5

How Is Competency Established

(h) A violation of this section or a rule adopted under this section is a ground for denial, suspension, or revocation of a license under this section. Proceedings for the denial, suspension, or revocation of a license and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes.)

Visual #6

Denial, Suspension or Revocation

(i) A real estate inspector licensed under this section may not:

(1) accept an assignment for real estate inspection if the employment or fee is contingent on the reporting of a specific, predetermined condition of the improvements to real property or is contingent on the reporting of specific findings other than those known by the inspector to be facts at the time of accepting such assignment; or

(2) act in a manner or engage in a practice that is dishonest or fraudulent or that involves deceit or misrepresentation; or

(3) perform a real estate inspection in a negligent or incompetent manner; or

(4) act in the dual capacity of real estate inspector and undisclosed principal in a transaction; or

(5) act in the dual capacity of real estate inspector and real estate broker or salesman; or

(6) perform or agree to perform any repairs or maintenance in connection with a real estate inspection pursuant to the provisions of any earnest money contract, lease agreement, or exchange of real estate; or

(7) perform a real estate inspection pursuant to a written contract for inspection which does not contain the following statement in the contract for inspection in at least 10-point bold type above or adjacent to the signature of the purchaser of the real estate inspection, to wit:

"NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT. FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY, OR THE ATTORNEY OF YOUR CHOICE."

(8) violate the rules adopted by the commission, or any provisions of this section.

(j) A person commits an offense if the person knowingly or intentionally engages in the business of real estate inspecting without a license under this section or performs an inspection during a period in which the inspector's license is revoked or suspended. An offense under this subsection is a Class B misdemeanor.

(k) This section does not apply to any electrician, plumber, carpenter, any person engaged in the business of structural pest control in compliance with the Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes), or any other person who repairs, maintains, or inspects improvements to real property and who does not hold himself or herself out to the public through personal solicitation or public advertising as being in the business of inspecting such improvements. It is further provided that the provisions of this section shall not be construed so as to prevent any person from performing any

Visual #7

Real Estate Inspector License Exemptions

and all acts which said person is authorized to perform pursuant to a license issued by the State of Texas or any governmental Subdivision thereof.

(1)(1) The commission shall establish a real estate inspection recovery fund which shall be set apart and maintained by the commission as provided in this subsection. The fund shall be used in the manner provided in this subsection for reimbursing aggrieved persons who suffer actual damages by reason of certain acts committed by a duly licensed real estate inspector, provided the real estate inspector was licensed by the State of Texas at the time the act was committed and provided recovery is ordered by a court of competent jurisdiction against the real estate inspector. The use of the fund as provided in Subdivision (1) of this subsection is limited to an act that is a violation of either Subsection (1) (3), (4), (5), (6), or (7), of this section.

(2) After the effective date of this section, when a person receives notice that he has successfully completed the licensing examination provided by Subsection (g) of this section, he shall pay, in addition to any other fees required by this section, a fee of $250, which shall be deposited in the real estate inspection recovery fund prior to the commission issuing such person a real estate inspector license.

(3) If on December 31 of any year the balance remaining in the real estate inspection recovery fund is less than $50,000, each real estate inspector, on renewal of his license during the following calendar year, shall pay, in addition to his license renewal fee, a fee of $100, which shall be deposited in the real estate inspection recovery fund, or a pro rata share of the amount necessary to bring the fund to $75,000, whichever is less.

(4)(A) No action for a judgment which subsequently results in an order for collection from the real estate inspection recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment which may result in collection from the real estate inspection recovery fund, the real estate inspector shall notify the commission in writing to this effect at the time of the commencement of the action.

(B) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a real estate inspector, on the grounds described in Subdivision (1) of this subsection that occurred on or after January 1, 1986, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on twenty days written notice to the commission,

Visual #8

Real Estate Inspector Recovery Fund

and to the judgment debtor, may apply to the court where the judgement was rendered for an order directing payment out of the real estate inspection recovery fund of the amount unpaid on the judgement, subject to the limitations stated in Subdivision (9) of this subsection.

(C) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show:

(i) that the judgment is based on facts allowing recovery under Subdivision (1) of this subsection;

(ii) that he is not a spouse of the debtor, or the personal representative of the spouse, and he is not a real estate inspector as defined by this section;

(iii) that he has obtained a judgment as set out in Subdivision (4)(B) of this subsection, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(iv) that based on the best information available, the judgment debtor lacks sufficient attachable assets to satisfy the judgment; and

(v) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(D) The court shall make an order directed to the commission requiring payment out of the real estate inspection recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this subsection, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Subdivision (4)(C) of this subsection and that the aggrieved person has satisfied all of the requirements of Subdivisions (4)(B) and (C) of this subsection.

(E) A license granted under the provisions of this section shall be revoked by the commission on proof that the commission has made a payment from the real estate inspection recovery fund of any amount toward satisfaction of a judgment against a licensed real estate inspector. No real estate inspector is eligible to receive a new license until he has repaid in full, plus interest at the current legal rate, the amount paid from the real estate recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

Visual #9

Facts Allowing Recovery From Fund

(5) The sums received by the real estate commission for deposit in the real estate inspection recovery fund shall be held by the commission in trust for carrying out the purpose of the real estate inspection fund. These funds may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from these investments shall be deposited to the credit of the real estate inspection recovery fund, provided, however, that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this subsection.

(6) When the commission receives notice of entry of a final judgment in a hearing as scheduled under Subdivision (4)(C) of this subsection, the commission may notify the attorney general of Texas of its desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf of, and in the name of, the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. In taking such action the commission and the attorney general shall act only to protect the fund from spurious or unjust claims or to insure compliance with the requirements for recovery under this subsection.

(7) When, on the order of the court, the commission has paid from the real estate inspection recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission which amount shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount in interest recovered by the commission on the judgment shall be deposited to the fund.

(8) The failure of an aggrieved person to comply with the provisions of this subsection relating to the real estate inspection recovery fund shall constitute a waiver of any rights under this subsection.

(9)(A) Notwithstanding any other provision, payments from the real estate inspection recovery fund are subject to the conditions and limitations in paragraphs (B) through (D) of this Subdivision.

(B) Payments may be made only pursuant to an order of a court of competent jurisdiction, as provided in Subdivision (4) of this subsection, and in the manner prescribed by this subsection.

(C) Payments for claims, including attorneys' fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to $7,500 regardless of the number of claimants.

(D) Payments for claims based on judgments against any one licensed real estate inspector may not exceed in the aggregate $15,000 until the fund has been reimbursed by the licensee for all amounts paid.

(10) Nothing contained in this subsection shall limit the authority of the commission to take disciplinary action against a licensee for a violation of this section or the rules and regulations of the commission nor shall the repayment in full of all obligations to the real estate inspection recovery fund by a licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this section.

(11) Any person receiving payment out of the real estate inspection recovery fund pursuant to Subdivision (9) of this subsection shall be entitled to receive reasonable attorney's fees as determined by the court, subject to the limitations stated in Subdivision (9) of this subsection.

(m) A person is not required to be licensed under this section to engage in the business of real estate inspecting until January 1, 1986. During the interim period between the effective date of this section and January 1, 1986, registration of real estate inspectors is covered by the law in effect on August 31, 1985, and that law is continued in effect for that purpose until midnight on December 31, 1985, at which time it shall cease to be operative.

Sections 19 - 20 No change.

Visual #10

Effective Date Of
Inspector Provision

A Real Estate Inspector

- One who inspects improvements to real property
  - -- structural
  - -- equipment
  - -- systems
- For employment by a buyer or seller

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Visual #1

Required Courses

Core real estate inspector courses
(Approved but not limited to)

-- electrical
-- mechanical
-- plumbing
-- roofing
-- structural

Inspector License Requirements

- Individual
- U.S. citizen or lawfully admitted alien
- Texas resident at least 60 days
- 18 years old
- Demonstrate honesty, trustworthiness, integrity, and competency
- Complete 90 clock hours of core real estate inspector courses
- Pass exam
- Pay fees and recovery fund assessment

Texas Real Estate Research Center
Visual #3

Real Estate Inspector License Fees

No more than:

- $150 for original application
- $200 for annual renewal
- $50 for license exam
- $20 for change of business address or license replacement

Texas Real Estate Research Center
Visual #4

How Is Competency Established ?

- License exam covering all required core real estate inspector courses
  - Given in Austin at least once every two months
- If applicant fails, must apply for re-examination and pay exam fee
- Must satisfy exam requirement within 6 months or submit new license application

Denial, Suspension or Revocation

- Report a specific, predetermined condition contingent on a fee
- Dishonest, fraud, deceit or misrepresentation
- Negligent or incompetent
- Dual capacity of inspector
  -- undisclosed principal
  -- broker/salesman
- Perform repairs in connection with inspection
- Perform inspection without specified notice of Texas Deceptive Trade Practices - Consumer Protection Act
- Violate Commission rules
- Inspects without a valid license

Real Estate Inspector License Exemptions

- Electricians
- Plumbers
- Carpenters
- Pest control
- Repair or maintenance personnel
- Individuals licensed by the State of Texas or any governmental subdivision thereof

Real Estate Inspector Recovery Fund

- Reimburses monetary damages caused by licensees
- Recovery ordered by court of competent jurisdiction
- Valid final judgment and judgment lien perfected
- Judgment debtor licensee lacks sufficient attachable assets
- License revoked when recovery fund makes payment
- $7,500 limit per transaction
- $15,000 limit per licensee

Texas Real Estate Research Center
Visual #8

Facts Allowing Recovery From Fund

- Aggrieved person is required to show:
  - judgment based on fact
  - not a spouse or personal representative of the spouse
  - not a real estate inspector
  - obtained in judgment
  - debtor lacks sufficient assets to satisfy judgment

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Visual #9

Effective Date Of Inspector Provision

- Provisions apply on January 1, 1986
- Prior law on registration applies until midnight, December 31, 1985

Texas Real Estate Research Center
Visual #10

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